

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

2005 SEP 28 P 3 5

DISTRICT CO  
DISTRICT OF MA

STONINGTON VINEYARDS, INC.,  
ROBERTA WOLMAN and NICK PAPAS,

Plaintiffs,

v.

EDDIE J. JENKINS, in his official capacity as  
Chairman of the Massachusetts Alcoholic  
Beverages Control Commission, et al.,

Defendants.

CIVIL ACTION  
NO. 05-CV-10982-JLT

**STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS'  
MOTION FOR JUDGMENT ON THE PLEADINGS**

The defendants Eddie J. Jenkins, in his official capacity as Chairman of the Massachusetts Alcoholic Beverages Control Commission, and Suzanne Iannella and Robert F Cronin, as Associate Commissioners of the Massachusetts Alcoholic Beverages Control Commission, (the "State Defendants"), hereby oppose the plaintiffs' motion for judgment on pleadings. Pursuant to Nat'l Rev. Corp. v. Violet, 807 F.2d 285 (1st Cir. 1986), decline to tal  
position on the constitutionality of the challenged aspects of the Massachusetts Liquor Contr  
Act, G.L. c. 138, § 1 et seq.. If this Court determines that the challenged aspects of that statu  
are unconstitutional, the resulting question of severability should be certified to the  
Massachusetts Supreme Judicial Court. Alternatively, if this Court elects not to certify the  
question, it should sever the statute by eliminating the current authority for direct shipping by  
Massachusetts "farm wineries" rather than eliminating direct shipment restrictions on out-of-  
state wineries, as plaintiffs request. Severing the statute in this way would eliminate the alle

discrimination against interstate commerce while minimizing the impact on Massachusetts' scheme of alcohol regulation.

For further grounds the State Defendants rely on their Memorandum of Law in Support of State Defendants' Opposition to Plaintiffs' Motion for Judgment on The Pleadings and Motion to Certify Question of Law, submitted herewith.

Respectfully submitted,

By their attorneys,

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ATTORNEY GENERAL

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Dated: September 28, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party ~~by mail~~ (by hand)

on 9/28/05  
Thomas Barnico